

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
August 25, 2008 Session

**TOLBERT CATES v. BODY PANELS COMPANY, INC.**

**Direct Appeal from the Chancery Court for Shelby County  
No. CH-02-1289-2    Arnold Goldin, Chancellor**

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**No. W2007-02628-SC-WCM-WC - Mailed December 4, 2008; Filed February 17, 2009**

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While working at Employer's warehouse, Employee fell approximately ten feet from a ladder onto a metal catwalk. He was treated in an emergency room for closed head trauma and arm, hip, and neck pain. Employee sought treatment from a psychiatrist for depression and anxiety and was diagnosed with major depression, post-traumatic stress disorder, and alcohol dependence in remission. Employee's psychiatrist opined that as a result of the fall at work, Employee was unable to function within a work environment and that the impairment was permanent. The trial court awarded permanent total disability benefits. On appeal, Employer challenges the trial court's findings with regard to both causation and vocational disability. After review, we affirm.<sup>1</sup>

**Tenn. Code Ann. § 50-6-225(e)(3) (Supp. 2007) Appeal as of Right;  
Judgment of the Chancery Court Affirmed**

DAVID G. HAYES, SR.J., delivered the opinion of the court, in which JANICE M. HOLDER, C.J. and DONALD P. HARRIS, SR.J., joined.

Robert B. C. Hale and Adam F. Glankler, Memphis, Tennessee, for the appellant, Body Panels Company, Inc.

Clyde W. Keenan, Memphis, Tennessee, for the appellee, Tolbert Cates.

**MEMORANDUM OPINION**

**Factual Background & Procedural History**

Tolbert Cates ("Employee") was an employee of Body Panels, Inc. ("Body Panels" or "Employer") from June 30, 2001, to April 8, 2002. On April 8, 2002, Employee was stocking

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<sup>1</sup>This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) (Supp. 2007) for a hearing and a report of findings of fact and conclusion of law.

inventory parts in the warehouse of Employer when he fell from a ladder and landed on a metal catwalk. Accounts of the distance of the fall varied from six to eight feet to ten to twelve feet. After Employee reported striking his head during the fall, he was taken to Methodist Hospital emergency room for treatment of arm, shoulder, neck, and hip pain. X-rays of Employee's shoulder, arm, ribs, spine, and hip appeared normal and revealed no fractures or other bone abnormalities. A CT scan revealed no skull fractures or abnormalities. The treating emergency room physician discharged Employee with diagnoses of closed head trauma, neck strain, and right arm and hip pain.

Employee consulted Dr. Khalid Rassoul, who recommended that Employee be evaluated by a psychiatrist, based upon Dr. Rassoul's preliminary assessment of post-concussion syndrome. Dr. Rassoul also referred Employee to a neurologist, Dr. Narayanaswami. Employee later received treatment from Dr. W. Harold Knight, an orthopaedic surgeon, who conducted his first evaluation of Employee on April 15, 2002. Dr. Knight prescribed an arm brace and pain medication, and determined that Employee could return to light duty work. Employee returned to Dr. Knight several times before being released from his care on July 2, 2002. Dr. Knight filed a C-32 standard form medical report which assigned no physical impairment or restrictions; however, he did recommend a psychiatric evaluation.

In June of 2002, Employee began receiving treatment from Dr. Roger Vogelfanger, a psychiatrist who had previously treated him in early 2001 for symptoms following a motor vehicle accident. Employee was seen by Dr. Vogelfanger, or by members of his staff, on numerous occasions between 2002 and 2006. During these visits, Employee reported worsening symptoms of severe depression and anxiety that he related to his fall from the ladder.

A trial was held in the Shelby County Chancery Court on October 3, 2007. Employee was thirty-five years old at the time of trial. Employee had worked for Employer on two or three prior occasions, the last of those beginning on June 23, 2001, and ending on April 8, 2002. Employee testified that he remembers little about the incident other than he struck his head during the fall and that he was temporarily "knocked out." He stated that he "came to" after being brought to a couch in the offices of Employer. Employee testified that he "went into shock and the trauma started and I started shaking all over." Employee stated that he ultimately sought treatment from Dr. Vogelfanger for his symptoms of depression and anxiety. Employee testified that his symptoms of lightheadedness, dizziness, black out spells, loss of balance, nervousness, memory loss, and depression made it impossible for him to return to work.

Dr. Vogelfanger's deposition testimony was admitted into evidence at trial. In January 2001, prior to Employee's fall from the ladder, Dr. Vogelfanger had previously treated Employee for post-traumatic stress disorder following a car accident. Dr. Vogelfanger testified that these symptoms had improved or were drastically resolved by May 2001. He stated, however, that the symptoms returned after Employee's fall from the ladder, which Dr. Vogelfanger characterized as a different episode. After the fall, Dr. Vogelfanger treated Employee in June 2002 for severe depression and anxiety. Employee was prescribed several medications for treatment of anxiety and depression. Dr. Vogelfanger testified that he initially diagnosed Employee with major depression, panic disorder,

and post-concussion syndrome. He testified that Employee, over the course of treatment, began complaining of symptoms of post-traumatic stress disorder, specifically, intrusive memories, nightmares, and flashbacks. Dr. Vogelfanger testified that people who suffered from post-traumatic stress disorder caused by a traumatic event at one time in their lives were “probably predisposed” to developing it again after another traumatic event.

Dr. Vogelfanger had most recently evaluated Employee on June 30, 2006, and he prepared a C-32 standard form medical report in which he opined that Employee had marked impairment based on the following: trouble performing routine household chores or errands without anxiety or flashbacks; difficulty relating to others outside of his immediate family; intrusive thoughts of his accident and impaired pain tolerance; slow thought processes and difficulty concentrating; and inability to function in a work-like setting.

Employer offered the testimony of its expert, Dr. Joel Reisman, a psychiatrist who performed an evaluation of Employee after reviewing his medical history. Dr. Reisman disagreed with Dr. Vogelfanger’s diagnosis of major depression, concluding that the diagnostic medical standard criteria were not met by Employee’s symptoms. Dr. Reisman testified that he believed Employee “has chronic ongoing depression that has been present on and off for many years.” Dr. Reisman further testified that he found no credible evidence that supported a diagnosis of post-traumatic stress disorder. Dr. Reisman opined that this diagnosis was incorrect, in light of Dr. Vogelfanger’s failure to utilize objective testing methods and his reliance upon Employee’s own account of his mental health history during treatment.

The trial court found that the evidence established a permanent total disability of the body as a whole. The court also ordered that Employee receive temporary total disability compensation for the period of April 11, 2002, to the date of trial. The trial court specifically accredited the testimony of Dr. Vogelfanger over that of Dr. Reisman, “in large part due to Dr. Vogelfanger’s long treatment of [Employee], both prior to and following the injury in question.” Employer filed a timely notice of appeal.

### **Analysis**

The Employer argues on appeal that the trial court erred in accrediting the testimony of Dr. Vogelfanger over that of Dr. Reisman, specifically as to the issues of disability and causation. Employer asserts that during Dr. Vogelfanger’s initial treatment of Employee from January to May of 2001, prior to his fall from the ladder in April 2002, Employee had been diagnosed with major depression, post-traumatic stress disorder, and alcohol dependence in remission and that these diagnoses are identical to the diagnoses that Dr. Vogelfanger later gave in his report from June 30, 2006. Employer cites the testimony of its expert, Dr. Reisman, that Employer’s “description of his symptoms of depression did not meet the diagnostic criteria for current major depression” and that he could find no objective criteria to support the diagnosis of post-traumatic stress disorder. Employer contends that the trial court erred in concluding that Employee sustained a compensable

work-related injury and argues that “the proper tests were not administered to enable Dr. Vogelfanger to render diagnoses of [post-traumatic stress disorder] and major depression.”

### I. Medical Causation

In workers’ compensation cases, the standard of review is de novo upon the record of the trial court accompanied by a presumption of correctness of the factual findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008); *Cutler-Hammer v. Crabtree*, 54 S.W.3d 748, 753 (Tenn. 2001). Application of this standard requires the Court to weigh in more depth the trial court’s findings and conclusions in a workers’ compensation case. *Cleek*, 19 S.W.3d at 773. Conclusions of law are subject to de novo review on appeal without any presumption of correctness. *Nutt v. Champion Int’l Corp.*, 980 S.W.2d 365, 367 (Tenn. 1998).

“An employee who suffers mental impairment resulting from physical trauma to the brain may be compensated under the Workers’ Compensation Act.” *Layman v. Vanguard Contrs.*, 183 S.W.3d 310, 312 (Tenn. 2001) (citing *Ivey v. Trans Global Gas & Oil*, 3 S.W.3d 441, 447 (Tenn. 1999)). For a pure mental injury to be compensable, it must be caused by “an identifiable stressful work-related event producing a sudden mental stimulus such as fright, shock, or excessive unexpected anxiety.” *Goodloe v. State*, 36 S.W.3d 62, 65 (Tenn. 2001). Immediately after the fall occurred, Employee was treated in an emergency room for a closed head injury. A neurological examination raised the question of whether Employee was suffering from post-concussion syndrome, and at least two treating physicians recommended a psychiatric evaluation.

The record demonstrates that Dr. Vogelfanger treated Employee extensively from 2002 to the date of trial. Dr. Vogelfanger’s last evaluation of Employee reflected a diagnosis of major depression, chronic and severe post traumatic stress disorder, and alcohol dependence in remission, which Dr. Vogelfanger opined was a result of Employee’s fall from a ladder. The record further supports a finding that Employee did not suffer from these symptoms during the ten months preceding the accident. Employee received treatment in January 2001 by Dr. Vogelfanger for depression and post-traumatic stress disorder, but Dr. Vogelfanger testified by deposition that these symptoms had improved or were drastically resolved by May 2001. In addition, both the Employer’s owner and the Employee’s supervisor testified that Employee exhibited no unusual behavior and that he was an employee in good standing at the time of the incident.

“Generally [an] injury arises out of and in the course of employment if it has a rational, causal connection to work and occurs while employee is engaged in duties of employment.” *Legions v. Liberty Mut. Ins. Co.*, 703 S.W.2d 620, 622 (Tenn. 1986). “Any reasonable doubt as to whether injury arose out of employment is to be resolved in favor of employee.” *Id.* After review, we conclude that the evidence preponderates in favor of the trial court’s finding that Employee suffered a mental injury arising out of and in the course of his employment. Employee’s fall from a ladder and his resulting mental injury was compensable as the result of “an identifiable stressful work-related event producing a sudden mental stimulus such as fright, shock, or excessive unexpected anxiety.” *See Goodloe*, 36 S.W.3d at 65.

With regard to the trial court's decision to attribute more weight to the testimony of Dr. Vogelfanger than that of Dr. Reisman, the trial court found that Dr. Reisman

was apparently, initially retained to be an expert to review records, and then, subsequently was presented as for the purpose of doing an Independent Medical Exam, which was essentially something that he suggested to be done. I don't believe that his testimony should be given the weight of Dr. Vogelfanger in this case who is not only his (Cates) treating doctor, but was his treating doctor both before and after this incident.

Further, this information was not disclosed to Employee prior to Dr. Reisman being selected by Employer as the independent medical examiner. When medical testimony differs, it is within the discretion of the trial judge to determine which expert testimony to accept." *Kellerman v. Food Lion, Inc.*, 929 S.W.2d 333, 335 (Tenn. 1996).

For these reasons, we conclude that the record contains adequate support for the trial court's decision to afford more weight to the testimony of Dr. Vogelfanger than that of Dr. Reisman. Moreover, we conclude that the evidence does not preponderate against the trial court's finding of medical causation.

## II. Disability

"The extent of vocational disability is a question of fact to be determined from all of the evidence, including lay and expert testimony." *Cleek v. Wal-Mart Stores, Inc.*, 19 S.W.3d 770, 773 (Tenn. 2000) (quoting *Nelson v. Wal-Mart Stores, Inc.*, 8 S.W.3d 625, 628 (Tenn. 1999)). We review factual findings de novo upon the record of the trial court accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2).

In his deposition, Dr. Vogelfanger opined that Employee suffered from major depression and post-traumatic stress disorder as a result of a traumatic episode, *i.e.*, his fall from a ladder on April 8, 2002. The record supports the trial court's decision to attribute more weight to the expert testimony of Dr. Vogelfanger, who had treated Employee periodically over several years, than that of Dr. Reisman, who performed only an evaluation of Employee. "When the medical testimony differs, the trial judge must obviously choose which view to believe. In doing so, he is allowed, among other things, to consider the qualifications of the experts, the circumstances of their examination, the information available to them, and the evaluation of the importance of that information by other experts." *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991). As further observed by our Supreme Court in *Orman*, 803 S.W.2d at 677, "it seems reasonable that the physicians having greater contact with the Plaintiff would have the advantage and opportunity to provide a more in-depth opinion, if not a more accurate one."

We further disagree with Employer's contention that Dr. Vogelfanger's diagnosis was deficient based on a lack of objective testing of Employee. An expert medical opinion may be based upon either subjective symptoms or objective findings. *Johnson v. Schevenell Ready Mix, Inc.*, 608 S.W.2d 582 (Tenn. 1980) ("[T]he opinion of a qualified medical expert witness based on subjective findings alone is sufficient to establish medical causation and the permanency of disability, if the evidence is found to be credible by the trial judge."). Therefore, we conclude that the evidence does not preponderate against the trial court's findings of vocational disability.

### **Conclusion**

Based upon the foregoing, we affirm the judgment of the Shelby County Chancery Court. Costs of this appeal are assessed against Employer, Body Panels, Inc., and its surety, for which execution shall issue if necessary.

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DAVID G. HAYES, SENIOR JUDGE

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**JUDGMENT ORDER**

This case is before the Court upon the motion for review filed by Body Panels Company, Inc. pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(A)(ii), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Body Panels Company, Inc., and its surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Janice M. Holder, CJ., not participating.